IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 802 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SURESHBHAI RATILAL PATEL

Versus

BANASKANTHA MEHSANA GRAMIN BANK

Appearance:

1. Special Civil Application No. 802 of 2003

MR MEHUL SHARAD SHAH for Petitioner No. 1

MR PK JANI with MR UNWALA for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.S.SHAH

Date of decision: 21/10/2004

ORAL JUDGEMENT

RULE. Mr Unwala for Mr PK Jani, learned counsel for the respondent waives service of rule for the respondent.

In the facts and circumstances of the case, the petition is taken up for final disposal today.

2. What is challenged in this petition under Article 226 of the Constitution is the orders passed by the disciplinary authority and the appellate authority holding that the petitioner is guilty of the charge levelled against him and imposing the penalty of degradation to the first stage of pay scale for clerical cadre.

3. The facts leading to this petition are as under:-

3.1 The petitioner is an employee of the respondent Banaskantha Mehsana Gramin Bank, which is a subsidiary of the Dena Bank and, therefore, "State" within the meaning of Article 12 of the Constitution. In view of the order that this Court proposes to pass, it is not necessary to set out all the facts in detail. Suffice it to state that the petitioner was served with the chargesheet dated 9.2.1998 alleging that while working as Clerk-cum-cashier at Jadia branch of the Bank from 16.6.1997 several acts of misconduct enumerated in the chargesheet were committed by the petitioner. The petitioner submitted his reply dated 17.4.1998. The departmental inquiry was instituted against the petitioner. The Inquiry Officer submitted his report stating that while the petitioner had committed breach of the bank's rules, charge No.1 i.e. making an attempt to commit fraud is not proved. Similarly, charge No.2 that he is acting in the manner prejudicial to the bank is not proved and similarly as far as charge No.3 is concerned, the Inquiry Officer came to the conclusion that though the petitioner had violated the Bank's rules, the petitioner had not gained anything. In short, the findings given by the Inquiry Officer were in favour of the petitioner.

3.2 The disciplinary authority thereafter issued order dated 1.11.1999 (Annexure-E) disagreeing with all the findings of the Inquiry Officer and specifically holding that the three charges levelled against the petitioner were proved. The disciplinary authority also gave reasons for arriving at such findings. In view of the defence taken up by the learned counsel for the respondent-Bank, the conclusions recorded by the disciplinary authority and the observations in the said order dated 1.11.1999 are set out verbatim :-

"I, therefore hold that the following Charges are PROVED:-

(1) Making an attempt to commit a Fraud,

(2) Acting in a manner prejudicial to the interest of the Bank,

(3) For committing breach of the rules in connection with the business of the Bank, by misusing official capacity for personal gain.

I would also like to take into account the Past Record of Shri S.R. PATEL, the chargesheeted employee, which shows that he was served with 3 (three) CHARGESHEETS:

(i) ... ...
(ii) ... .
(iii) ... .

In view of my FINDINGS on the Charges, I have to consider what should be the Punishment for the charges which are proved. Considering the seriousness of the charges and want of any extenuating circumstances, I propose to impose the following Punishment:

DEGRADATION TO THE FIRST STAGE OF
PAY SCALE FOR CLERICAL CADRE"

Further, the period spent by him under Suspension will be treated as period not spent on duty.

I would now give Shri S.R. PATEL a Hearing regarding the nature of the proposed punishment to Show Cause Why the Proposed Punishment should not be imposed upon him.

I, therefore, fix the hearing on Monday, the 22nd November 1999 in my Chamber at 11.00 a.m. when I will give Mr S.R. PATEL a Hearing. If he does not attend the Hearing on that day at the time & place mentioned, I shall presume that, he has nothing to say regarding the proposed Punishment & I shall proceed accordingly.

A copy of FINDINGS/REPORTS from the Enquiry Officer is enclosed herewith.

sd/-
DISCIPLINARY AUTHORITY

3.3 In response to the above order, the petitioner submitted his reply dated 22.11.1999 (Annexure-F) supporting the findings given by the Inquiry Officer. The hearing was fixed on 22.11.1999. However, the petitioner did not make any presentation at the said hearing except submitting the above written arguments dated 22.11.1999 (Annexure-F). The disciplinary authority in the final order stated as under:-

> "I have carefully gone through it (written arguments) and I do not find any merit therein, which is worth to be taken into account for reduction in the punishment proposed through my order dated 1.11.1999."

After making the said observations, the disciplinary authority imposed the penalty of degradation to the first stage of pay scale for clerical cadre and revoked the order of suspension and treating the period as the "period not spent on duty".

3.4 Aggrieved by the above order, the petitioner carried the matter in appeal before the appellate authority, which is the Board of Directors. The Chairman of the Bank communicated the decision of the Board of Directors in the following terms:-

> ".. The Board of Directors, taking into account the various punishments awarded on earlier occasions, has decided to relax the punishment purely on humanitarian grounds and approved the final punishment as under:-
>
> "Degradation to the second stage of pay scale for clerical cadre".

Accordingly, the decision of the Board of Directors was communicated by the Chairman through the aforesaid communication dated 11.5.2000 (Annexure-I). The petitioner thereafter preferred a review application dated 24.11.2000 (Annexure-J), which came to be rejected by the Chairman's communication dated 12.12.2000 (Annexure-K).

3.5 The petitioner has, therefore, filed the present petition for challenging the aforesaid orders of the disciplinary authority and the appellate authority.

4. Mr Mehul S Shah, learned counsel for the petitioner has submitted that as per the principles of natural justice when the inquiry officer had exonerated

the petitioner from the major charges, the disciplinary authority could not have disagreed with the same and recorded the final findings before giving the petitioner an opportunity of being heard. It is submitted that a perusal of the order dated 1.11.1999 (Annexure-E) makes it clear that the disciplinary authority first decided to differ from the Inquiry Officer and held that all the charges levelled against the petitioner were proved and thereafter issued the notice only to hear the petitioner regarding the nature or quantum of punishment. Strong reliance is placed on the decision of the Apex Court in Punjab National Bank vs. Kunj Behari Misra, AIR 1998 SC 2713.

5. On the other hand, Mr Jani with Mr Unwala for the respondent-bank have vehemently opposed the petition and submitted that the order dated 1.11.1999 (Annexure-E) was a show cause notice to hear the petitioner on the question why the proposed punishment should not be imposed upon the petitioner and, therefore, the disciplinary authority was ready to hear the petitioner on the question of findings as well. It is further submitted that in ay view of the matter, the petitioner did have an opportunity to assail the findings of the disciplinary authority before the Board of Directors which was the appellate authority and, therefore, also no prejudice has been caused to the petitioner.

6. Before dealing with the facts of the present case, it is necessary to refer to the following principles laid down by the Apex Court in Punjab National Bank vs. Kunj Behari Misra, AIR 1998 SC 2713:-

> "The disciplinary proceedings break into two stages. The first stage ends when the disciplinary authority arrives at its conclusions on the basis of the evidence, inquiry officer's report and the delinquent employee's reply to it. The second stage begins when the disciplinary authority decides to impose penalty on the basis of its conclusions. It is necessary for the authority which is to finally record an adverse finding to give a hearing to the delinquent officer. If the inquiry officer had given an adverse finding, the first stage required an opportunity to be given to the employee to represent to the disciplinary authority, when when an earlier opportunity had been granted to them by the inquiry officer. It will, therefore, not stand to reason that when the finding in favour of the delinquent officers is proposed to

be overturned by the disciplinary authority then no opportunity should be granted. The first stage of the inquiry is not completed till the disciplinary authority has recorded its findings."

When the Punjab National Bank pleaded that Regulation 7(2) did not require any such opportunity to be given to the delinquent, the Apex Court observed as under:-

".. the principles of natural justice have to be read into Regulation 7(2). As a result thereof whenever the disciplinary authority disagrees with the inquiry authority on any article of charge then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the inquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the inquiry officer. The principles of natural justice, as we have already observed, require the authority, which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file representation before the disciplinary authority records its findings on the charges framed against the officer."

7. A perusal of the order dated 1.11.1999 (Annexure-E) makes it clear that the disciplinary authority i.e. the Chairman of the Bank clearly indicated that he did not agree with the findings of the inquiry officer for the reasons given in the said order and also held that the charges are proved, the words, "I would now give the delinquent a hearing regarding nature of the proposed punishment" are more than sufficient to indicate that the disciplinary authority intended to hear the delinquent only on the question of nature and quantum of punishment and not on the question whether the disciplinary authority should or should not agree with the findings of the inquiry officer. The aforesaid inference is also fortified by the contents of the final order dated 2.12.1999 wherein the disciplinary authority stated that the disciplinary authority did not find any merit which was worth consideration for reduction in the punishment proposed in the order dated 1.11.1999. Hence,

the disciplinary authority did not intend to give and as a matter of fact did not give any opportunity of hearing to the petitioner before deciding to differ from the findings of the inquiry officer.

8. When there was breach of the aforesaid fundamental principle of natural justice, the hearing before the appellate authority would not cure that defect.

9. In view of the above discussion, this petition is allowed. The impugned orders - the order dated 1.11.1999 (Annexure-E), the final order dated 2.12.1999 (Annexure-G) and the appellate order dated 11.5.2000 (Annexure-I), so also the order dated 12.12.2000 (Annexure-K) rejecting the review/ revision application are hereby quashed and set aside with liberty to the respondent-bank to give show cause notice to the petitioner calling upon the petitioner to show cause why the disciplinary authority should not differ from the findings of the Inquiry Officer. The notice shall also contain the tentative reasons of the disciplinary authority for such proposed disagreement and thereafter the disciplinary authority shall proceed with the inquiry from that stage.

It is clarified that since the impugned orders are set aside on the aforesaid ground of violation of the principles of natural justice, the question as to what consequential benefits should be given to the petitioner would depend upon the final order which the disciplinary authority shall pass after giving the petitioner an opportunity of being heard as aforesaid.

It will still, however, be open to the disciplinary authority to consider whether or not to differ from the findings of the Inquiry Officer and if it decides to differ, then it shall issue a fresh show cause notice giving tentative reasons for the disagreement.

10. It is clarified that this Court has not gone into the merits of the charges levelled against the petitioner or the findings given by the Inquiry Officer.

11. Rule is made absolute to the aforesaid extent with no order as to costs.

(M.S. SHAH, J.)

zgs/-